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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/663,914	09/18/2000	Adelmo Monsalve-Gonzalez	5346	4221

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EXAMINER
TRAN LIEN, THUY

ART UNIT	PAPER NUMBER
1761	12

DATE MAILED: 10/11/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

R-12

Application No.	Applicant(s)
09/663,914	Gonzalez et al.
Examiner	Art Unit
Lien Tran	1761

Office Action Summary

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) [X] Responsive to communication(s) filed on *Jul 9, 2002*.

2a) [X] This action is **FINAL**. 2b) [ ] This action is non-final.

3) [ ] Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

4) [X] Claim(s) *21-25, 27, and 31-59* is/are pending in the application.

4a) Of the above, claim(s) _____ is/are withdrawn from consideration.

5) [ ] Claim(s) _____ is/are allowed.

6) [X] Claim(s) *21-25, 27, and 31-59* is/are rejected.

7) [ ] Claim(s) _____ is/are objected to.

8) [ ] Claims _____ are subject to restriction and/or election requirement.

Application Papers

9) [ ] The specification is objected to by the Examiner.

10) [ ] The drawing(s) filed on _____ is/are a) [ ] accepted or b) [ ] objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) [ ] The proposed drawing correction filed on _____ is: a) [ ] approved b) [ ] disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) [ ] The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) [ ] Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) [ ] All b) [ ] Some* c) [ ] None of:

1. [ ] Certified copies of the priority documents have been received.
2. [ ] Certified copies of the priority documents have been received in Application No. _____.
3. [ ] Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

14) [ ] Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

a) [ ] The translation of the foreign language provisional application has been received.

15) [ ] Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) [ ] Notice of References Cited (PTO-892)
2) [ ] Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) [X] Information Disclosure Statement(s) (PTO-1449) Paper No(s). *9, 11*
4) [ ] Interview Summary (PTO-413) Paper No(s).
5) [ ] Notice of Informal Patent Application (PTO-152)
6) [ ] Other:

1. The 102 and 103 rejections of claims 21-27 and 31-42 over the Schmidt reference is hereby withdrawn.

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless -
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 38 and 51 are rejected under 35 U.S.C. 102(b) as being anticipated by Devic (5480788).

Devic discloses a bleached bran product. The product is obtained by treating bran from cereal with alkaline aqueous hydrogen peroxide solution having a pH greater than or equivalent to 8.5. A sequestering agents for metal ion can also be added; such agents include sodium silicate, soluble magnesium salts, citric acid, sodium tripolyphosphate and pyrophosphoric acids. The hydrogen peroxide is typically used in the form of an aqueous solution of 30-70% strength. The amount of hydrogen peroxide used advantageously varies from 1-20% by weigh relative to the dry weight of the material, depending on the desired degree of whiteness and depending on the nature of the fibrous material. The bleached product is treated with catalase to decompose peroxide (See col. 2-5 and the examples).

Devic discloses the a bleached bran product that is obtained by treatment with alkaline aqueous hydrogen peroxide solution and also in the presence of a chelating agent. Thus, it is inherent, the product has the same property as claimed.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. Claims 21-25,27,31-59 are rejected under 35 U.S.C. 103(a) as being unpatentable over Devic in view of Ramaswamy (5023103).

The teaching of Devic is described above. Devic does not disclose the L value, the properties, adding the bran to the type of foods claimed, the particle size and the use of ozone.

Ramaswamy teaches ozone is a known bleaching agent. (See col. 5 lines 25-30)

It would have been obvious to one skilled in the art to vary the treatment to obtain a bleached product having varying degree of whiteness. Devic teaches the amount of hydrogen peroxide used can vary from 1-20% depending on the desired degree of whiteness. One can vary

the degree of whiteness depending on the intended used of the product. For example, if the bleached bran is added to flour, it would be desirable to have a high degree of whiteness to match the color of the flour. However, if the bleached bran product is added to dough containing whole wheat flour, or dark color component such as brown sugar, then the whiteness of the product is not that critical. It would also have been obvious to add the bleached bran product to any foods when it is desirable to increase the fiber content of the products; this would have been an obvious matter of choice. Since the Devic bleached bran product is obtained by treating with alkaline aqueous hydrogen peroxide solution, it obviously will have properties such as water absorption value, reduce native flavor components and increase antioxidant activity as claimed. As to the use of ozone as the bleaching agent, it would have been obvious to one skilled in the art to use other known bleaching agent as long as the required bleaching is obtained and Ramaswamy disclose ozone is a known bleaching agent. In absence of showing of unexpected result or criticality, it would have been obvious to use any other known chelating agents; all the agents claimed are well known. As to the difference is the processing parameters claimed in claims 43,45,46,55,57, the claims are directed to a product. Determination of patentability in " product-by-process claims" is based on the product itself. Such product is unpatentable if it is same as or obvious from product of prior art (see In re Thorpe 227 USPQ 964).

7. Applicant's arguments with respect to claims 21-25, 27 and 31-59 have been considered but are moot in view of the new ground(s) of rejection.

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien Tran whose telephone number is 703-308-1868. The examiner can normally be reached on Wed-Fri. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9310.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

October 2, 2002

Lien Tran

LIEN TRAN
PRIMARY EXAMINER
Group 1762